S VEERASINGAM

v.

KERETAPI TANAH MELAYU BHD & ORS (NO 2)

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[SUIT NO: S2-21-92-1994]
9 MAY 2001

ADMINISTRATIVE LAW: *Exercise of administrative powers - Domestic discipline - Punishment - Whether there were irregularities in conduct of disciplinary proceedings - Whether charge sheet was defective - Punishment - Whether salary reduction was erroneous in law and/or in excess of jurisdiction*

ADMINISTRATIVE LAW: *Rights and liabilities of public servants - Termination of service in the public interest - Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, GO 44(1) and (2) - Right to be heard - Whether a dismissal for art. 135(2) of Federal Constitution to apply - Whether termination a punishment*

PUBLIC SERVANTS: *Compulsory retirement - Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, GO 44(1) and (2) - Right to be heard - Whether a dismissal for art. 135(2) of Federal Constitution to apply - Whether order to retire a punishment*

CONSTITUTIONAL LAW: *Public servants - Compulsory retirement - Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, GO 44(1) and (2) - Right to be heard - Whether a dismissal for art. 135(2) of Federal Constitution to apply - Whether order to retire a punishment*

A collision between two trains occurred when the plaintiff was on duty. An inquiry was convened and the plaintiff was held responsible for the accident. As a result, his salary was reduced by three points for two years. Subsequently, the Public Services Department offered the plaintiff the post of station manager without the condition that he be on probation for one year prior to his confirmation. Within one year however, the plaintiff was retired under GO 44(1) and (2) of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980.

Before this court, the plaintiff sought for the following declarations. Firstly, that the reduction of salary points was erroneous in law and/or in excess of jurisdiction. And secondly, that his termination of service via the retirement was erroneous in law and/or in excess of jurisdiction.

The plaintiff argued that the decision-making process was flawed as he had not been given an opportunity to make a plea in mitigation of sentence after the disciplinary committee found him guilty. The plaintiff added that an irregularity also occurred when different persons issued the charge sheet and meted out the punishment. He submitted that they should have been carried out by the same authority. The plaintiff contended that there was a binding contract when he was appointed as station manager and therefore it could not be arbitrarily revoked.

The plaintiff argued that the decision-making process which led to his termination of services premised under GO 44(1) and (2) was fatally flawed and the court should strike down the termination if the process was contaminated.

Additionally, the plaintiff submitted that he had been unjustly punished twice with regard to the train collision incident, *ie*, once by KTM which resulted in his salary reduction and another by the PSD which resulted in the termination of his services.

It was the plaintiff's contention that under the "Panduan Penyelenggaraan Tatatertib 1980" the disciplinary board of KTM was required to resolve proceedings within one month upon receiving the plaintiff's reply to the charges against him in relation to the first action. Thus, the charge sheet was infructuous when proceedings were commenced after one month.

Held:

[1] The decision-making process which led to the disciplinary action was not flawed. The plaintiff here had not been dismissed or reduced in rank but had his salary reduced. The procedure for breach of discipline in such situations is provided in GO 26(2)-(11), by virtue of GO 26(1). (p 175 f-h)

[2] Parties are bound by their pleadings and ought not be allowed to veer from their pleadings unless an application to amend had been made and allowed. As the plaintiff had not raised in his pleadings or even applied to amend his statement of claim regarding the issuance of the charge sheet and the meting out of punishment by different persons, such matters would not be considered before this court. (p 176 c-d)

[3] Under GO 27 Chapter A, the plaintiff was required to serve at least one year in the new post before he would be eligible to be considered as being confirmed in the post of station manager. Further, GO 36 Chapter A requires a letter of support from his head of department before being confirmed. (pp 176 h-i & 177 a)

[3a] There was no letter of support from the plaintiff's department head and the claimant had not been confirmed as his services had been terminated within a year, ie before his eligibility date. Accordingly, he had to revert back to the earlier post of a clerk. (p 177 b)

[4] There were two distinct actions taken against the plaintiff which involved two corresponding decision-making processes. The first decision-making process which resulted in the plaintiff's reduction of salary had been conducted in compliance with all the procedures found in the General Orders. The process had not been flawed by a failure to allow for mitigation. The termination order was distinct and separate matter altogether. Under GO 44(4), officers terminated under the Regulations may not be given the opportunity of being heard and where the termination was based on public interest it would not be considered as a dismissal for the purpose of art. 135(2) of the Federal Constitution to apply. (pp 177 d-h & 178 c-d)

[5] Since the termination order was not a punishment, it could not be said that the plaintiff had been punished twice for the same offence. The disciplinary action related to the accident only whereas the termination was based on GO 44(1) and (2) by which the plaintiff was pensioned off. Thus, it could not be argued that the plaintiff was punished twice for the same offence. (p 179 f-h)

[6] The "Panduan Penyelenggaraan Tatatertib 1980" was only a guide and did not have the effect of law. There was no mandatory requirement for it to be applied strictly. (p 180 c)

[Plaintiff's claim dismissed with costs.]

Case(s) referred to:

Balakrishnan v. Ketua Pengarah Perkhidmatan Awam Malaysia & Anor [1981] 2 MLJ 259 ***(refd)***

Hngh Ah Leong v. Inspector General of Police & Ors [1995] 2 AMR 1993 ***(refd)***

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal [2001] 2 CLJ 525 ***(foll)***

S Veerasingam v. Keretapi Tanah Melayu Bhd & Anor [1999] 5 CLJ 467 ***(refd)***

Utra Badi Perumal v. Lembaga Tatatertib Perkhidmatan Awam [1998] 2 CLJ 306 ***(refd)***

RJ Parvatikar v. Guledgud City Municipality AIR [1961] Mysore 181 ***(dist)***

Legislation referred to:

Federal Constitution, art. 135(2)

Public Officers (Conduct & Discipline) (Chapter D) General Orders 1980, GO. 23, 25, 26(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), 36(a), (b), (c), (d), (e), (f), (g), (h), (i), 27, 44(1), (2), (4)

Railways Act 1991, s. 92(2)

Other source(s) referred to:
Dr GM Kothari, *Law Relating to Disciplinary Matters and Standing Orders*, 1976 edn, p 505

For the plaintiff - Karpal Singh (M Manoharan); M/s Karpal Singh & Co
For the 2nd defendant - Azizah Nawawi; AG's Chambers
For the 3rd defendant - YM Chin (Jennifer Chandran); M/s Allen & Gledhill

Reported by M Maheswaran

JUDGMENT

RK Nathan J:

Background

The plaintiff was initially employed as a stationmaster by KTM, which was corporatised and became known as Keretapi Tanah Melayu Berhad, which is the 1st defendant. Pursuant to s. 92(2) of the Railways Act 1991 all properties, rights and liabilities of the Malayan Railway Administration vested in the Railway Assets Corporation, the 3rd defendant.

The plaintiff's action initially was against the 1st defendant and the Government of Malaysia, the 2nd defendant, seeking a declaration that the disciplinary proceedings and subsequent termination against him were *ultra vires* and unlawful. The 1st defendant (KTMB) ceased to be a party to the suit after its successful application to strike out the action against it on the ground that there was no cause of action against it.

In an earlier judgment in respect of the same case (see *S Veerasingam v. Keretapi Tanah Melayu Bhd & Anor* [1999] 5 CLJ 467) I had held that by virtue of s. 92(2) of the Railway Act 1991 all properties, rights and liabilities of the Malayan Railway Administration which then managed KTM upon the commencement of the Act vested in the 3rd defendant. The Railway (Successor Company) Act 1991 defines liabilities as including obligations of every description, whether present or future, actual or contingent. The 3rd defendant has stepped into the shoes of the 1st defendant and legally has to meet the plaintiff's claim if same is proved. There can be no doubt as to the 3rd defendant's obligations to the plaintiff in the event the disciplinary action and termination are found to be unlawful.

Facts

On 18 February 1990 whilst the plaintiff was on duty at the Segambut Railway Station, an accident occurred involving two trains. A show cause letter was sent to the plaintiff. He responded. The plaintiff was informed that the inquiry committee, after its deliberations, had found him liable for the accident and had imposed punishment by way of reduction in salary by three points for a

period of two years. His appeal against the said decision was dismissed by way of a letter dated 24 January 1992. Whilst these disciplinary proceedings and appeal were pending, the public services commission (PSC), on behalf of the Government of Malaysia, by letter dated 27 February 1991 offered the plaintiff the position of station manager without the condition that the plaintiff be on probation for one year prior to his confirmation. Upon acceptance of the offer, the plaintiff was appointed station manager on 20 March 1991. By letter dated 10 January 1992 the plaintiff was informed by the public services department (PSD) that the Government of Malaysia had decided to retire the plaintiff as of 26 January 1992. The said letter is reproduced herewith:

Rujukan kami: JPA(S)TT.228/66/(25)
Tarikh: 10 Januari 1992

Encik Veerasingam a/l Subramaniam

Melalui dan salinan

Pengurus Besar
Pentadbiran Keretapi Tanah Melayu
Peti Pos No. 10001
Jalan Hishamuddin
50621 Kuala Lumpur

(u.p.: Y. Bhg. Dato' Abdul Rahim bin Osman)

Tuan,

Adalah saya dengan ini memaklumkan bahawa Kerajaan telah memutuskan untuk menamatkan perkhidmatan tuan demi kepentingan awam di bawah Perintah Am 44(1) dan (2), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib)(Bab 'D') 1980 berkuatkuasa mulai 26.1.1992.

2. Pada menjalankan kuasa di bawah Seksyen 10(5)(d) Akta Pencen 1980, ke bawah Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong telah memutuskan bahawa tuan dikehendaki bersara demi kepentingan awam. Tarikh kuatkuasa persaraan itu ialah juga pada 26.1.1992.

3. Tuan boleh mengambil dan menghabiskan semua cuti rehat yang tuan layak menerimanya bermula pada 16.1.1992 supaya dapat dihabiskan pada 25.1.1992. Soal pencen tuan akan diuruskan mengikut Akta Pencen 1980.

Sekian, terima kasih.

'BERKHIDMAT UNTUK NEGARA'

Saya yang menurut perintah,

t.t.
(TAN SRI DATO' MAHMUD BIN TAIB)
Ketua Pengarah Perkhidmatan Awam Malaysia

The Plaintiff's Claim

The plaintiff is seeking the following declarations:

(1) That the first impugned action (namely the reduction in three points of salary *vide* letter dated 13 December 1990) is erroneous in law and/or in excess of jurisdiction and unlawful (the disciplinary action).

(2) That the second impugned action (namely the termination order *vide* letter dated 10 January 1992) is erroneous in law and/or in excess of jurisdiction and/or unlawful and null and void (the termination order).

Findings Of The Court

Obviously being dissatisfied with his termination the plaintiff must have written to the Prime Minister with a copy of the letter to the 1st defendant because the executive chairman of the 1st defendant responded to the said letter by his reply dated 8 October 1993. The said letter is reproduced herewith and it reads as follows:

P.U.4/4/25 Jld.II

8th October, 1993

Encik S. Veerasingam
37 Jalan Limau Purut
Bukit Bandaraya
Bangsar Park
59000 Kuala Lumpur

Dissatisfied with KTM's Disciplinary Action And PSD's Termination of Service based on a single issue which is Train Accident on 18.2.1990

I refer to, the copy to me of your letter dated 6th August, 1993 addressed to Y.A.B. Perdana Menteri Malaysia in respect of the above matter.

2. Though you were not an employee of KTMB on 1st August, 1992 when it took over the functions of the old KTM, we have nevertheless looked into the circumstances leading to the termination of your employment.

3. We have examined the findings of the various enquiry committees and disciplinary boards set up by KTM and PSD consequent to the head-on collisions between two trains at Segambut Station on 19th February, 1990 when you were the Station Manager in-charge but find no grounds to say that you were unfairly treated or that the committees and boards were wrong in their recommendations.

4. I regret KTMB cannot justifiably alter the recommendation.

Sgd.
Tan Sri C Selvarajah
Executive Chairman

This is an agreed and admitted document. Pursuant to the directions given during the case management, this means that the contents too have been agreed and admitted to by all the parties.

Is The Decision Making Process Flawed?

It was the plaintiff's case that the decision making process was flawed as he was not given an opportunity to make a plea in mitigation of sentence after he was found guilty by the disciplinary board and when his salary was reduced by three points from RM1,065 to RM945 with no remission for two years. The plaintiff relied on the decision of *Utra Badi Perumal v. Lembaga Tatatertib Perkhidmatan Awam* [1998] 2 CLJ 306 which held that it was unjust to deny a civil servant an opportunity to be heard in mitigation before punishment is imposed on him as the punishment itself involved a further decision making process. The court went on to hold that the right of the plaintiff to be heard in mitigation is implicitly encompassed in general order (GO) 23 and in art. 135(2) of the Federal Constitution. The defendant appealed to the Court of Appeal which dismissed the appeal. The defendant then after obtaining leave appealed to the Federal Court which on 24 April 2001 allowed the appeal. The Federal Court (see *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525) was asked to respond to two questions posed:

(1) Whether a show cause letter issued by a public service disciplinary authority which directed a member of a public service's attention to the possibility of punishment of dismissal or reduction in rank sufficiently complied with the provisions of art. 135(2) of the Federal Constitution that no member of a public service shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard?

(2) Does art. 135(2) of the Federal Constitution require the relevant disciplinary authority to afford the public officer an oral hearing?

In a lengthy and erudite judgment, Abdul Malek Ahmad FCJ said at pp. 541-542 of the judgment after considering art. 135(2) of the Federal Constitution:

> ... As submitted by the learned leading Senior Federal Counsel, the letter to the respondent to show cause dated 31th January 1991 conveyed with sufficient clarity and certainty the contemplated punishment namely dismissal or reduction in rank.
>
> The grounds were fully spelt out in the letter and the charge was well drafted as it laid down all the important and relevant particulars. Any reasonable person would have had no difficulty in responding to the allegations made. The opportunity, reasonable and sufficient, was given to the respondent to make a representation to rebut the charge.

> In essence, the undoubted overall effect of the show cause letter illustrated that the respondent had at the earliest available moment been informed of the two possible punishments under consideration should he not be able to exculpate himself of the charge made. With all these in mind, he had been accorded every opportunity to defend himself.
>
> This was in fact what the respondent did by letter dated 7 February 1991. However, he made no representation as regards punishment though he had been made aware of the two possibilities. Can he now say that he had been deprived of that opportunity?

The Federal Court held that "there is certainly no separate right to make representations upon the punishment that ought to be meted out to the officer to be dismissed or reduced in rank".

In the light of this latest decision on this point this argument of the plaintiff must perforce fail. In any case the decision in *Utra Badi* related to the application of GO 23 and art. 135(2) of the Federal Constitution both of which are reproduced herewith for ease of reference:

GO 23:

> 23. In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard: ...

Article 135(2) of the Federal Constitution:

> (2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard: ...

Both GO 23 and art. 135(2) make specific references to cases involving dismissal and reduction in rank only. However, in the case before me the penalty imposed was neither dismissal nor reduction in rank but a reduction in three points in salary under GO 36(g). Even though GO 36 provides seven alternative penalties including dismissal and reduction in rank, para. 3 of the show cause letter to the plaintiff dated 17 May 1990 clearly shows reference made to GO 25 which encompasses procedures for breach of discipline "which merits punishment lesser than dismissal or reduction in rank". Therefore when the show cause letter was issued to the plaintiff, the disciplinary authority had in mind any of the punishments under GO 36(a) to (g) and not reduction in rank or dismissal as in paras (h) and (i), which by virtue of GO 26(1) encompass a different procedure as provided in GO 26(2) to (11). In the circumstances I hold that the decision making process leading to the disciplinary action was not flawed.

Charge Sheet Issued And Punishment Meted Out By Different Persons

The plaintiff also argued that a further defect which adversely affected the decision making process was that the charge sheet was issued against the plaintiff by the disciplinary officer responsible for him whereas the punishment was meted out by the chairman of the KTM head office disciplinary board for group 'C' officers. It was the plaintiff's case that the entire exercise should have been carried out by the same authority. In support, the plaintiff relied on *Hngh Ah Leong v. Inspector General of Police & Ors* [1995] 2 AMR 1993.

The 2nd defendant's response to this was to point out that this issue was not pleaded in the statement of claim; whereas in Hngh this issue was specifically pleaded. It is a cardinal rule of pleadings that parties are bound by their pleadings and ought not to be allowed to veer from their pleadings unless an application to amend had been made and allowed. In this case since the plaintiff had relied on Hngh as authority in support of the issue raised, the plaintiff ought to have at least applied to amend the statement of claim. Since this was not done, I have to rule that this issue is outside the pleaded case of the plaintiff and therefore a matter that this court will not consider.

A Binding Contract Cannot Be Revoked

This has reference to the interview conducted by the PSC which offered the plaintiff the position of station manager without the condition that the plaintiff be on probation for one year prior to his confirmation. Upon his acceptance of the offer, the plaintiff was appointed station manager on 20 March 1991. Since the PSC had offered the plaintiff the said post, KTM also made the same offer which the plaintiff had accepted. It was therefore argued by the plaintiff that both KTM and the PSC (the 2nd defendant) had by their actions created a binding agreement which now could not be arbitrarily revoked. In response the 2nd defendant admits that the plaintiff was indeed offered the new post of station manager by a letter dated 27 February 1991 which he accepted. However, cl. 2(d) of the said letter stipulated that before the plaintiff could be confirmed in that post of station manager he must serve in that post for at least one year. The said clause was to give effect to the requirement of GO 27 Chapter A which states that:

> Seseorang pegawai yang telah disahkan dalam jawatannya dan dilantik ke satu jawatan baru boleh dikenakan tempoh percubaan selama satu hingga tiga tahun dan boleh disahkan dalam jawatannya bila-bila masa sahaja selepas satu tahun.

In this case the plaintiff had previously been confirmed in his post as a clerk on 1 May 1958 (based on his evidence in court) before he was appointed to the post of station manager. There is no probationary period but cl. 2(d) of the offer letter and GO 27 Chapter A required him to serve in that new post for at least one year before he can be eligible to be considered to be confirmed in that post of station manager. Further, under GO 36 Chapter A, before the

plaintiff can be confirmed in the post of station manager, there must be a "perakuan" (letter of support) from his "Ketua Jabatan", and none has been exhibited in this case.

From the evidence of DW1, the plaintiff has not been confirmed in his post as station manager because he is only eligible to be considered for confirmation one year after, that is, after 20 March 1992. Before his eligibility date, his services were terminated with effect from 26 January 1992. Therefore, since he had not been confirmed in the post of station manager he had to revert back to his earlier post of "pegawai kerani biasa".

Is The Decision Making Process Leading to Plaintiff's Termination Under GO 44(1) and (2) of Chapter D Flawed?

It was the plaintiff's case that the decision making process leading to the plaintiff's termination under GO 44(1) and (2) of the Public Officers (Conduct & Discipline) (Chapter 'D') General Orders 1980 is fatally flawed. The plaintiff argued that if the process is contaminated at any point leading to the termination, the court should strike down the termination. This court was urged to accord the proper premium to a right to livelihood.

There are two distinct actions taken against the plaintiff in this case, namely:

(a) Disciplinary action of reduction in three points in salary *vide* letter dated 13 January 1990.

(b) Termination of service *vide* letter dated 10 January 1992.

Therefore, since there are two distinct actions, then there must be two corresponding decision making processes. The decision making process of the disciplinary action started with the show cause letter dated 13 January 1990. The plaintiff then made his representation and subsequently the authority deliberated on the plaintiff's case before finding him guilty and imposing upon him the sentence of reduction in three points in salary. As evidenced from the testimony of DW3 from KTMB, all the procedures as provided for in the general orders have been complied with. Further, as I had earlier found, the process has not been flawed by a failure to allow for mitigation or by the application of the principle in *Hngh*'s case.

However, in respect of the termination order, it is a distinct and separate matter altogether. As said by the Federal Court in *Balakrishnan v. Ketua Pengarah Perkhidmatan Awam Malaysia & Anor* [1981] 2 MLJ 259 at p. 262 "... GO 44 comes under Part IV of the GO under the heading 'Miscellaneous' and opens with the significant *non obstante* clause 'Notwithstanding these general orders, ...,' thus making it quite separate and distinct from the preceding three parts of the GO dealing with conduct, disciplinary procedure and general

provisions pertaining to disciplinary punishments. GO 44 goes therefore beyond and is additional to what precedes it ...". Further, at p. 262 the court held that the operation of GO 44 begins with the calling of the report from the head of department, which in its nature is merely directory and discretionary. On the facts of that case, there was already a report from the Director General of Inland Transport for the authorities to act upon under GO 44.

Therefore, being a distinct and separate action, the decision making process cannot be made the basis to attack the termination order. The decision making process ends with the "surat tindakan tatatertib" dated 13 December 1990. A new process emerges in respect of the termination order.

Therefore it is only in respect of dismissal cases that the authorities have to comply with procedural fairness pursuant to art. 135(2). However, as provided under GO 44(4) "Notwithstanding anything in these regulations and any other law to the contrary, in terminating the service of any officer in the public interest under this regulation, such officer may not be given any opportunity of being heard and an officer whose service has been terminated in the public interest under this regulation shall not, for the purpose of art. 135(2) of the Federal Constitution be regarded as having been dismissed ... ".

Was The Plaintiff Punished Twice?

The plaintiff argued that clearly a disciplinary board was set up by the PSD consequent upon the head-on collision between the two trains as seen from the letter dated 8 October 1993 referred to earlier. From the said letter obviously KTM too had set up a disciplinary board as a result of the same collision resulting in the reduction in salary by three points for a period of two years.

The plaintiff argued that he could not be punished twice, that is, once by KTM which imposed punishment by reducing his salary by three points for a period of two years and again by the government represented by the PSD, terminating his services by way of the letter dated 10 January 1992.

Even as early as in the 12th century, Thomas Becket spoke the famous words *"memo bis vexare debet"*. Translated it means, "No man shall be tried twice for the same offence". This basic rule has transcended itself throughout the ages and remains till today a solid defence against double jeopardy. Karpal Singh referred the court to *RJ Parvatikar v. Guledgud City Municipality* AIR [1961] Mysore 181 where a municipality, after an inquiry into the conduct of a municipal employee for having used a service stamp of one and half anna for private purposes, punishes him by dismissal from service but he is again reinstated after depriving him of his salary for four and half months. The court held that it was outside the competence of the municipality, when the matter

was once closed, to conduct another enquiry into the same charges, after about seven years and subject the employee to another penalty for the same act of misconduct for which he had already been punished.

In *"Law Relating to Disciplinary Matters and Standing Orders"*, the learned author Dr GM Kothari (1976 edn) said at p. 505 as follows:

> (2) If an employee has been exonerated in the departmental enquiry then second enquiry cannot be instituted. When the exoneration comes from a court of law then the case stands on high-level. If the matter is once decided on merits fresh enquiry is barred. Suspension order in pursuance of the second enquiry is also illegal.
>
> (3) If once action is taken and worker is either warned and suspended then that cannot be made the basis for a subsequent action.

The 2nd defendant however pointed out that it was wrong to equate termination under GO 44 with punishment under GO 36. LB Curzon's *"A Dictionary of Law"* defines "punishment" as "penalty inflicted by a court on a convicted offender". The 2nd defendant thus relied on *Balakrishnan*'s case *(supra)* wherein Abdoolcader FCJ said at p. 263 of the judgment as follows:

> There is no punitive element involved either in the termination of the appellant's service in the public interest. He has not been denied a pension and indeed the indication is that he will indeed be paid a pension once his pension factor is determined.

I am persuaded by the thinking of this great judge and agree that since the termination order is not a punishment it cannot be said that the plaintiff had been punished twice for the same offence. It must be emphasised that the termination order is a separate and distinct action (*Balakrishnan*'s case) and that the grounds for termination is wider than the disciplinary action. The disciplinary action relates to the accident only whereas the termination order relates to the "... condition of service, the usefulness of the officer thereto, the work and conduct of the officer and all the other circumstances of the case" (GO 44(2)). Further the letter of termination dated 10 January 1992 specified that the plaintiff has been terminated from service pursuant to GO 44(1) and (2).

In the present case there is no punitive element, as the plaintiff has not been denied his pension. He has been pensioned off on the basis of public interest pursuant to GO 44(1) and (2). Since the termination is a distinct and separate action, I hold that the plaintiff has not been punished twice for the same offence.

The case of *RJ Parvatikar* cited by the plaintiff is distinguishable. In that case the applicant was punished twice for the same act of misconduct. Further the court also held that the second punishment "was not made in good faith".

Matter To Be Resolved Within One Month

The disciplinary board of KTM was required to resolve proceedings within one month upon receipt of the plaintiff's reply to the charges preferred against him, pursuant to the "Panduan Penyelenggaraan Tatatertib 1980" (Panduan). It was the submission of Karpal that the charge sheet of 17 May 1990 stood infructuous after the expiry of the one month. I accept the 2nd defendant's submission on this that the Panduan is only a guide and that it does not have the effect of law. Further there is no mandatory requirement for it to be applied strictly.

In the light of all my findings I dismiss the plaintiff's claim with costs. In the circumstances, it follows that the action also stands dismissed against the 3rd defendant. The suit had earlier been struck out against the 1st defendant.